**Preparing Membership Balance Plans**

**GSA Committee Management Secretariat Guidance**

# Introduction:

The Federal Advisory Committee Act (FACA or “the Act”), as amended, 5 U.S.C. 1001 *et seq.,* and the implementing regulations in the FACA Final Rule (41 CFR 102-3) provide the basis for and guidance concerning the governance of the establishment, operation, management, and termination of Federal advisory committees (“advisory committee”) in the executive branch. 5 U.S.C. 1004(b)(2), (c) require “…the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee…”

The corresponding FACA Final Rule reiterates this requirement at 41 CFR § 102-3.30(c), and, for discretionary (agency authority or authorized by statute) advisory committees being established, renewed, reestablished, or merged requires agencies to provide a description of their plan to attain fairly balanced membership during the charter consultation process with the Committee Management Secretariat (CMS)(41 CFR § 102- 3.60(b)(3)).

A Membership Balance Plan (MBP) is a best practice and is consistent with 5 U.S.C. 1004(b)(2), (c). In addition, while some statutes prescribe an advisory committee’s membership, many prescribe only part of the membership, and agencies need to apply balance to the membership appointments they control.

**Are Membership Balance Plans required or a best practice?**

FACA requires all Federal advisory committees to be fairly balanced, regardless of whether they are discretionary or non-discretionary (required by statute or Presidential directive) advisory committees.

Although the FACA Final Rule only addresses the MBP for discretionary advisory committees, CMS highly recommends that executive departments and agencies apply these requirements to non-discretionary advisory committees as well.

The requirement for fairly balanced membership applies not only during the formation of advisory committee membership for a new advisory committee, but also as membership vacancies occur. Although FACA mandates that Federal advisory committees be fairly balanced in the points of view represented by their membership, how to achieve balance is at the discretion of each agency.

# FACA Final Rule:

The FACA Final Rule clarifies that to attain fairly balanced membership, agencies:

1. Should ensure they fully consider and understand the potential implications or anticipated impacts of the advisory committee’s potential recommendations, including groups and entities potentially affected or interested in such recommendations, in determining the areas of expertise or perspectives needed (including relevant lived experience);
2. Should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed on advisory committees requiring technical expertise;
3. Must described the agency’s conclusions regarding the points of view needed to promote fairly balanced membership; and
4. Should conduct broad outreach, using a variety of means and methods, to ensure the call for nominees reaches the interested parties and stakeholder groups likely to possess those points of view (including underserved communities, as appropriate).

In addition, best practice guidance in achieving fairly balanced Federal advisory committee membership includes considering the:

1. Federal advisory committee’s mission;
2. Geographic, ethnic, social, economic, or scientific impact of the Federal advisory committee’s recommendations;
3. Types of specific perspectives required, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors (individuals with lived experience could be represented in any of these groups);
4. The need to obtain divergent points of view on the issues before the Federal advisory committee; and
5. The relevance of State, local, or tribal governments to the development of the Federal advisory committee’s recommendations.

Agencies are encouraged to include additional information beyond what is suggested in this guidance document as they deem appropriate, and to work with their Committee Management Officer to ensure that any applicable internal agency requirements are also followed.

# The Membership Balance Plan:

The MBP is a stand-alone document that describes the agency’s plan to attain fairly balanced membership (in terms of the points of view represented) as appropriate based on the nature and functions of the advisory committee. The MBP informs, and is consistent with, the advisory committee’s charter, especially the section on advisory committee membership and designation. The MBP is submitted, as applicable, as part of the documentation provided to the CMS during the consultation process described in 41 CFR § 102-3.60 and must be uploaded to the FACA database when the agency files the advisory committee charter with CMS per 41 CFR § 102-3.60(b)(3).

The agency prepares the plan for new discretionary advisory committee establishments and updates the plan whenever a discretionary advisory committee is renewed, reestablished, or merged to form a new advisory committee, or a discretionary advisory committee’s charter is amended.

# Elements of a Membership Balance Plan:

**(1) Advisory Committee’s Official Designation.** Provide the advisory committee’s exact official name, consistent with the authority.

**(2) Authority.** Provide the authority for the establishment, renewal, reestablishment, amendment or merger of the advisory committee (e.g., cite the statute, Executive Order or other Presidential directive, or note the advisory committee is agency authority) and reference the advisory committee is being established, renewed, reestablished, or merged (or a charter is being amended) in accordance with the provisions of FACA.

**(3) Objectives and Scope of Activities.** State the overall purpose and parameters of the advisory committee’s mission or charge and describe the committee’s goal(s).

1. If the advisory committee is agency authority, the objectives and scope will be a primary factor influencing the balance of the advisory committee.
2. If the advisory committee is authorized or required by statute or created by Presidential directive, the membership composition of the advisory committee may already be fully or partly prescribed by the authorizing legislation, which may result in a full or partial predetermined balance of the members.

**(4) Points of View.** State the process the agency will use to identify the points of view necessary when establishing an advisory committee and when vacancies occur.

1. Describe how this process will ensure representation of all points of view required for fairly balanced advisory committee membership based on the nature and functions of the advisory committee. This includes what groups and entities are potentially affected or interested in the advisory committees’ recommendations, and what type of professional or personal **qualifications** are needed (including relevant lived experience).
2. Identify **other balance factors**, as appropriate, that your agency identifies as important in achieving a fairly balanced advisory committee. These factors, which are not required by the Act, could include, the geographic location of candidates, importance of including regional, state, or local government expertise, diversity in the work sector (e.g., private industry, academia), etc.
3. Describe the agency’s **conclusions** regarding the points of view to promote fairly balanced advisory committee membership, which could also identify an anticipated relative distribution of candidates across the types of expertise/experience needed.

Determining the points of view needed will affect the size of the advisory committee.

**Elements of a Membership Balance Plan, continued:**

Although too many or too few individuals representing an interest or area of expertise could result in the advisory committee not being fairly balanced in the viewpoints represented, numerical parity of viewpoints is not required. This section should also clearly state that **membership balance is not static** and the points of view needed may change depending on the work of the advisory committee.

**(5) Broad Outreach.** Describe how the agency intends to conduct broad outreach to ensure that the call for nominees reaches the interested parties, underserved communities (as appropriate based on the function of the advisory committee), and stakeholder groups likely to possess the points of view identified in element #4. This section should identify the variety of methods/tools the agency will use to identify candidates with the necessary points of view (e.g., recommendations from current and former advisory committee members, publication of nomination notices, search of relevant professional associations, use of social media, etc.).

**(6) Candidate Selection.** Describe the selection criteria and the approach the agency will use to select candidates. Ensure the selected candidates represent the points of view identified in element #4, including individuals with relevant lived experiences, for a fairly balanced membership. This section should:

1. Identify key persons (by position or function, not name) who will evaluate the results of the outreach and propose candidates for advisory committee membership (e.g., the Designated Federal Official, selection panel, etc.).
2. Identify key agency staff (again, by position, not name) involved in affirming the proposed candidates results in fairly balanced membership and final selection on the advisory committee (e.g., agency FACA attorney, agency head, etc.).
3. Discuss how a determination was made to appoint any individuals as Special Government Employee (SGE) or Representative members.
4. State the membership term limit(s) of advisory committee members, if applicable. Agency heads are encouraged to set member term limits, where possible. Term limits result in turnover of membership and new perspectives, which affects the balance of an advisory committee.
5. Describe how advisory committee vacancies, if any, will be handled by the agency (vacancies, and the length of time they remain unfilled, can impact the balance of the advisory committee).

**(7) Subcommittee Balance.** Subcommittees subject to FACA should either state that the process for determining advisory committee member balance on subcommittees is the same as the process for the parent advisory committee or describe how it is different. As a best practice, consideration should be given to having fairly balanced membership at the subcommittee level to better assure diversity of perspectives for work products being considered and deliberated on by the parent committee.

**(8) Date Prepared/Updated.** Insert the date the MBP was initially prepared by the agency, along with the date(s) the MBP is updated.

# FACA References

Current statutory requirements for a FAC charter are identified in 5 U.S.C. 1008(c)(2)and are repeated in the FACA Final Rule under 41 CFR §§ 102-3.70, 102-3.75, and 102-3.80. For additional guidance see the following:

* [**The Federal Advisory Committee Act (FACA)**](https://www.govinfo.gov/link/uscode/5/1001)

<https://uscode.house.gov/view.xhtml?path=/prelim@title5/part1/chapter10&edition=prelim>

* [**FACA Final Rule (41 CFR Part 102-3)**](https://www.regulations.gov/document/GSA-FMR-2022-0015-0010)

https://www.regulations.gov/document/GSA-FMR-2022-0015-0010

* [**GSA FACA database**](https://www.facadatabase.gov/FACA/s/)

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* [**Committee Management Secretariat website**](https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management)

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Comments? Please send to [**CMS@GSA.gov**](mailto:cms@gsa.gov)**.**

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